

HOUSE BILL 859

D4, E2

11r1606
CF SB 768

By: **Delegates Dumais, Clippinger, A. Kelly, Simmons, Valderrama, Waldstreicher, and Wilson**

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2011

CHAPTER _____

1 AN ACT concerning

2 **Child Abuse – Out of Court Statements of Child Victims**

3 FOR the purpose of altering the age for the admission into evidence of a certain out of
4 court statement made by a child victim; adding certain counselors and
5 ~~caseworkers~~ therapists to the list of certain professionals to whom a child
6 victim's out of court statement was made and who may testify concerning the
7 statement; ~~repealing provisions that allow certain out of court statements to be~~
8 ~~admissible if the child victim does not testify~~; requiring the child victim to
9 testify as a prerequisite to the admissibility of the child victim's out of court
10 statement in a criminal proceeding or certain juvenile court proceeding;
11 clarifying the circumstances under which an out of court statement of a child
12 victim may be admitted into evidence in a child in need of assistance proceeding
13 in the juvenile court; requiring notice to certain individuals of the audio or
14 visual recording of a certain out of court statement by a child victim; limiting
15 the circumstances under which notice of the content of a certain out of court
16 statement by a child victim is required to be provided ~~and under which a certain~~
17 ~~deposition is authorized~~; eliminating the requirement that the court examine
18 the child victim in chambers under certain circumstances; and generally
19 relating to out of court statements of child victims.

20 BY repealing and reenacting, with amendments,

21 Article – Criminal Procedure

22 Section 11-304

23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2008 Replacement Volume and 2010 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article – Criminal Procedure**

5 11–304.

6 (a) In this section, “statement” means:

7 (1) an oral or written assertion; or

8 (2) nonverbal conduct intended as an assertion, including sounds,
9 gestures, demonstrations, drawings, and similar actions.

10 (b) Subject to subsections (c), (d), and (e) of this section, the court may admit
11 into evidence in a juvenile court proceeding or in a criminal proceeding an out of court
12 statement to prove the truth of the matter asserted in the statement made by a child
13 victim who:

14 (1) is under the age of [12] 13 years; and

15 (2) is the alleged victim or the child alleged to need assistance in the
16 case before the court concerning:

17 (i) child abuse under § 3–601 or § 3–602 of the Criminal Law
18 Article;

19 (ii) rape or sexual offense under §§ 3–303 through 3–307 of the
20 Criminal Law Article;

21 (iii) attempted rape or attempted sexual offense in the first
22 degree or in the second degree under §§ 3–309 through 3–312 of the Criminal Law
23 Article; or

24 (iv) in a juvenile court proceeding, abuse or neglect as defined in
25 § 5–701 of the Family Law Article.

26 (c) An out of court statement may be admissible under this section only if the
27 statement was made to and is offered by a person acting lawfully in the course of the
28 person’s profession when the statement was made who is:

29 (1) a physician;

30 (2) a psychologist;

1 (3) a nurse;

2 (4) a social worker; [or]

3 (5) a principal, vice principal, teacher, or school counselor at a public
4 or private preschool, elementary school, or secondary school;

5 **(6) A COUNSELOR LICENSED OR CERTIFIED IN ACCORDANCE**
6 **WITH TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE; OR**

7 **(7) A ~~CASEWORKER~~ THERAPIST LICENSED OR CERTIFIED IN**
8 **ACCORDANCE WITH TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.**

9 (d) (1) Under this section, an out of court statement by a child victim may
10 come into evidence **IN A CRIMINAL PROCEEDING OR IN A JUVENILE COURT**
11 **PROCEEDING OTHER THAN A CHILD IN NEED OF ASSISTANCE PROCEEDING**
12 **UNDER TITLE 3, SUBTITLE 8 OF THE COURTS ARTICLE** to prove the truth of the
13 matter asserted in the statement:

14 (i) if the statement is not admissible under any other hearsay
15 exception; and

16 (ii) [regardless of whether] **IF** the child victim testifies.

17 **‡(2) (I) IN A CHILD IN NEED OF ASSISTANCE PROCEEDING IN**
18 **THE JUVENILE COURT UNDER TITLE 3, SUBTITLE 8 OF THE COURTS ARTICLE,**
19 **AN OUT OF COURT STATEMENT BY A CHILD VICTIM MAY COME INTO EVIDENCE**
20 **TO PROVE THE TRUTH OF THE MATTER ASSERTED IN THE STATEMENT;**

21 **1. IF THE STATEMENT IS NOT ADMISSIBLE UNDER**
22 **ANY OTHER HEARSAY EXCEPTION; AND**

23 **2. REGARDLESS OF WHETHER THE CHILD VICTIM**
24 **TESTIFIES.**

25 **(II)** If the child victim does not testify, the child victim's out of
26 court statement will be admissible only if there is corroborative evidence that:

27 **(i) ~~the defendant had the opportunity to commit the alleged~~**
28 **~~crime; or~~**

29 **(ii) ~~the child respondent or~~ the alleged offender had the**
30 **opportunity to commit the alleged abuse or neglect.‡**

1 ~~[(3)] (2)~~ To provide the defendant, child respondent, or alleged
 2 offender with an opportunity to prepare a response to the statement, the prosecuting
 3 attorney shall serve on the defendant, child respondent, or alleged offender and the
 4 attorney for the defendant, child respondent, or alleged offender within a reasonable
 5 time before the juvenile court proceeding and at least 20 days before the criminal
 6 proceeding in which the statement is to be offered into evidence, notice of:

7 (i) the State's intention to introduce the statement; [and]

8 (ii) **ANY AUDIO OR VISUAL RECORDING OF THE STATEMENT;**
 9 **AND**

10 **(III) IF AN AUDIO OR VISUAL RECORDING OF THE**
 11 **STATEMENT IS NOT AVAILABLE,** the content of the statement.

12 ~~[(4)] (3)~~ (i) ~~{The} IF AN AUDIO OR VISUAL RECORDING OF THE~~
 13 ~~STATEMENT IS NOT AVAILABLE, THE~~ defendant, child respondent, or alleged
 14 offender may depose a witness who will testify under this section.

15 (ii) Unless the State and the defendant, child respondent, or
 16 alleged offender agree or the court orders otherwise, the defendant, child respondent,
 17 or alleged offender shall file a notice of deposition:

18 1. in a criminal proceeding, at least 5 days before the
 19 date of the deposition; or

20 2. in a juvenile court proceeding, within a reasonable
 21 time before the date of the deposition.

22 (iii) Except where inconsistent with this paragraph, Maryland
 23 Rule 4-261 applies to a deposition taken under this paragraph.

24 (e) (1) A child victim's out of court statement is admissible under this
 25 section only if the statement has particularized guarantees of trustworthiness.

26 (2) To determine whether the statement has particularized guarantees
 27 of trustworthiness under this section, the court shall consider, but is not limited to, the
 28 following factors:

29 (i) the child victim's personal knowledge of the event;

30 (ii) the certainty that the statement was made;

31 (iii) any apparent motive to fabricate or exhibit partiality by the
 32 child victim, including interest, bias, corruption, or coercion;

1 (iv) whether the statement was spontaneous or directly
2 responsive to questions;

3 (v) the timing of the statement;

4 (vi) whether the child victim's young age makes it unlikely that
5 the child victim fabricated the statement that represents a graphic, detailed account
6 beyond the child victim's expected knowledge and experience;

7 (vii) the appropriateness of the terminology of the statement to
8 the child victim's age;

9 (viii) the nature and duration of the abuse or neglect;

10 (ix) the inner consistency and coherence of the statement;

11 (x) whether the child victim was suffering pain or distress when
12 making the statement;

13 (xi) whether extrinsic evidence exists to show the defendant or
14 child respondent had an opportunity to commit the act complained of in the child
15 victim's statement;

16 (xii) whether the statement was suggested by the use of leading
17 questions; and

18 (xiii) the credibility of the person testifying about the statement.

19 (f) In a hearing outside of the presence of the jury or before the juvenile
20 court proceeding, the court shall:

21 (1) make a finding on the record as to the specific guarantees of
22 trustworthiness that are in the statement; and

23 (2) determine the admissibility of the statement.

24 (g) (1) In making a determination under subsection (f) of this section, the
25 court shall examine the child victim in a proceeding in the judge's chambers, the
26 courtroom, or another suitable location that the public may not attend unless:

27 (I) the child victim:

28 [(i)] 1. is deceased; or

29 [(ii)] 2. is absent from the jurisdiction for good cause shown or
30 the State has been unable to procure the child victim's presence by subpoena or other
31 reasonable means; OR

1 **(II) THE COURT DETERMINES THAT AN AUDIO OR VISUAL**
2 **RECORDING OF THE CHILD VICTIM'S STATEMENT MAKES AN EXAMINATION OF**
3 **THE CHILD VICTIM UNNECESSARY.**

4 (2) Except as provided in paragraph (3) of this subsection, any
5 defendant or child respondent, attorney for a defendant or child respondent, and the
6 prosecuting attorney may be present when the court hears testimony on whether to
7 admit into evidence the out of court statement of a child victim under this section.

8 (3) When the court examines the child victim as paragraph (1) of this
9 subsection requires:

10 (i) one attorney for each defendant or child respondent, one
11 attorney for the child victim, and one prosecuting attorney may be present at the
12 examination; and

13 (ii) the court may not allow a defendant or child respondent to
14 be present at the examination.

15 (h) (1) This section does not limit the admissibility of a statement under
16 any other applicable hearsay exception or rule of evidence.

17 (2) This section does not prohibit the court in a juvenile court
18 proceeding from hearing testimony in the judge's chambers.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.